



PLANNING COMMISSION AGENDA REPORT

VI.2

MEETING DATE: AUGUST 25, 2008

ITEM NUMBER:

**SUBJECT: APPEAL OF ZONING APPLICATION ZA-08-23
1799 NEWPORT BOULEVARD**

DATE: AUGUST 14, 2008

**FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER
(714)754-5609**

DESCRIPTION

The request is an appeal of the Zoning Administrator's approval of Zoning Application ZA-08-23, to deviate from parking requirements to legalize an expansion and accommodate an outdoor seating area for a yogurt shop (Swirls Yogurt).

APPELLANT/APPLICANT

The appellant is Katherine Young. The original applicant is Cindy Ton, representing Tempest Equities, the owner of the property.

RECOMMENDATION

Uphold the Zoning Administrator's decision to approve the project by adoption of Planning Commission resolution.



MEL LEE, AICP
Senior Planner



KIMBERLY BRANDT, AICP
Asst. Development Services Director

BACKGROUND

The property is located in the City's Downtown Redevelopment Project Area on the 1700 block of Newport Boulevard, just south of West 18th Street. The property is bounded by the Old Newport Boulevard Frontage Road and public parking to the east, a public alley and a public parking lot to the west, and the remainder of the businesses along the frontage road to the south. This commercial area has historically been deficient in parking.

On July 24, 2008, the Zoning Administrator approved Zoning Application ZA-08-23 to legalize the expansion of the indoor seating area and to allow outdoor seating for an existing yogurt shop (Swirls Yogurt). The expansion, which results in an overall seating (public) area greater than 300 square feet, requires a minor conditional use permit for a reduction in required parking spaces and for the outdoor seating per the Zoning Code requirements for eating and drinking establishments. The approval letter, including the conditions of approval, is contained in Attachment 5.

On July 31, 2008, the Zoning Administrator's approval was appealed by Katherine Young, the owner of a restaurant located at 1773 Newport Boulevard (Roman Cucina, formerly Bamboo Terrace).

ANALYSIS

The appeal, a copy of which is attached to this report (Attachment 2), states that allowing the expansion will be detrimental to other properties due the shortage of available parking spaces for the businesses in the area. A map showing the location of the yogurt shop as well as the other eating establishments on that block is also attached to this report as Attachment 3.

Planning Application PA-07-54 to allow a sit-down restaurant (Aloha Grill) with an expanded outdoor seating was approved by the Planning Commission on February 11, 2008. The staff report containing additional background information related to the parking within the area can be viewed on the City's web page at the link below:

<http://www.ci.costa-mesa.ca.us/council/planning/2008-01-28/012808PA0754.pdf>

The Zoning Administrator approved the expanded seating for the yogurt shop based on a determination that the expansion would have a negligible impact on the overall parking within the area, due to the proximity of the yogurt shop to the public parking lot located on West 18th Street. This lot contains 54 parking spaces and the yogurt shop has a rear public entrance/exit to this parking lot. Additionally, the Zoning Administrator determined that the nature of the food sales (snacks and dessert foods) would be complementary to the existing full service restaurants on the block. Finally, the approval incorporates appropriate conditions of approval to minimize any impacts to surrounding properties and uses.

ENVIRONMENTAL DETERMINATION

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from Section 15301, Existing Facilities, of CEQA.

GENERAL PLAN AND REDEVELOPMENT PLAN CONFORMITY

The expansion of the use is permitted in the C2 zone, with a minor conditional use permit, and is therefore consistent with the General Plan and Redevelopment Plan, specifically, Objective LU-1B, which encourages the long-term productivity and viability of the community's economic base.

ALTERNATIVES

The Planning Commission has the following alternatives:

1. Uphold the Zoning Administrator's decision to approve the expansion;
2. Overturn the Zoning Administrator's decision and deny the expansion. If the expansion is denied, the applicant could not submit substantially the same type of application for six months.

CONCLUSION

It is the Zoning Administrator's opinion that, based on the recommended modifications and conditions, the expansion will not create any adverse impacts on surrounding properties. Therefore, staff supports upholding the approval of the request.

- Attachments:
1. Draft Planning Commission Resolution (Denial and Approval)
Exhibit "A" - Draft Findings
Exhibit "B" - ZA-08-23 Conditions of Approval
 2. Appeal Application and Exhibits
 3. Location Map
 4. Plans
 5. Zoning Administrator's letter for ZA-08-23

cc: Deputy City Mgr. - Dev. Svs. Director
Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Katherine Young
1829 Glenwood Lane
Newport Beach, CA 92660

Cindy Ton
6241 E. Fox Glen Drive
Anaheim Hills, CA 92807

Tempest Equities – Sid Crossley
P.O. Box 2902
Newport Beach, CA 92659

File Name: 082508ZA0823Appeal	Date: 081408	Time: 3:00 p.m.
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ATTACHMENT 1

RESOLUTION NO. PC-08-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA UPHOLDING THE ZONING ADMINISTRATOR'S DECISION TO APPROVE ZONING APPLICATION ZA-08-23

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Cindy Ton, authorized agent for Tempest Equities/Sid Crossley, owner of real property located at 1799 Newport Boulevard, requesting approval of a minor conditional use permit to deviate from parking requirements to legalize an expansion and accommodate an outdoor seating area for a yogurt shop (Swirls Yogurt), located in a C2 zone; and

WHEREAS, on July 24, 2008, the Zoning Administrator approved Zoning Application ZA-08-23 with conditions of approval to minimize impacts to surrounding properties; and

WHEREAS, on July 31, 2008, the Zoning Administrator's approval of ZA-08-23 was appealed to the Planning Commission; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 25, 2008.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **UPHOLDS** the Zoning Administrator's approval of Zoning Application ZA-08-23 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the appeal of Zoning Application ZA-08-23 and upon applicant's compliance with each and all of the conditions and conditions contained in Exhibit "B" of Zoning Application ZA-08-23, as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification, or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 25th day of August, 2008.

Donn Hall Chair, Costa Mesa
Planning Commission

STATE OF CALIFORNIA)

)ss

COUNTY OF ORANGE)

I, Kimberly Brandt, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on August 25, 2008, by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Secretary, Costa Mesa
Planning Commission

EXHIBIT "A"

FINDINGS (Approval)

- A. The minor conditional use permit to allow a reduction in parking requirements and extend the hours of operation on Friday and Saturday nights substantially complies with Costa Mesa Municipal Code Section 13-29(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the minor conditional will not be detrimental to the health, safety, and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the use has been limited through conditions to minimize impacts to the surrounding businesses. Granting the minor conditional use permit will not allow a use, density or intensity, which is not in accordance with the general plan or redevelopment plan.
- B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA pursuant to Section 15301 for Existing Facilities.
- C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"

CONDITIONS OF APPROVAL

- Plng.
1. Hours of operation shall be from 11:00 a.m. to 11:00 p.m., Sunday through Thursday, and 11:00 a.m. to 11:30 p.m., on Friday and Saturday.
 2. Outdoor patio seating shall not exceed three tables and 12 seats.
 3. Within 30 days of approval of this application, sign(s) shall be posted in the customer service area stating that there is parking available in the public parking lot on West 18th Street. The Planning Division shall review and approve the sign locations.
 4. If parking shortages or other parking-related problems arise, the business operator shall institute whatever operational measures necessary to minimize or eliminate the problem, including, but not limited to, reduction of tables/seats or modification to hours of operation.
 5. Any change in the operational characteristics shall require prior approval by the Planning Division and may require processing of an amendment to the minor conditional use permit.
 6. The yogurt shop shall be limited to the type of operation described in this staff report, i.e., limited menu items, restricted outdoor seating that does not extend beyond the boundary of the tenant space. The Planning Division shall review any change in operational characteristics of the business or change to another business where food or beverages are served to ensure the business has similar operational characteristics.
 7. The rear door shall remain closed at all times during business hours except for entry and exit only.
 8. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
 9. Within 30 days of approval, a sign shall be posted at the rear entrance directing customers and employees to use consideration when entering their cars and leaving the parking lot.
 10. The minor conditional use permit herein approved shall be valid until revoked. However, the conditional use permit shall expire at the end of one (1) year unless a business license is obtained and/or the business legally commences or the applicant applies for and is granted an extension of time. The minor conditional use permit may be referred to the Zoning Administrator for modification or revocation at any time if the conditions of approval have not been complied with, if the use is operated in violation of applicable laws or ordinances or, if in the opinion of the Development Services Director or his designee, any of the findings upon which the approval was based are no longer applicable.
 11. A copy of the conditions of approval shall be kept on the premises and presented to any authorized City official upon request. New business/property owners shall be notified of the conditions of approval upon transfer of business or ownership of land.

RESOLUTION NO. PC-08-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA, REVERSING THE ZONING
ADMINISTRATOR'S DECISION AND DENYING ZONING
APPLICATION ZA-08-23**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Cindy Ton, authorized agent for Tempest Equities/Sid Crossley, owner of real property located at 1799 Newport Boulevard, requesting approval of a minor conditional use permit to deviate from parking requirements to legalize an expansion and accommodate an outdoor seating area for a yogurt shop (Swirls Yogurt), located in a C2 zone; and

WHEREAS, on July 24, 2008, the Zoning Administrator approved Zoning Application ZA-08-23 with conditions of approval to minimize impacts to surrounding properties; and

WHEREAS, on July 31, 2008, the Zoning Administrator's approval of ZA-08-23 was appealed to the Planning Commission; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 25, 2008.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **REVERSES** the Zoning Administrator's decision and **DENIES** Zoning Application ZA-08-23 with respect to the property described above.

PASSED AND ADOPTED this 25th day of August, 2008.

Donn Hall, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS (Denial)

- A. The minor conditional use permit does not comply with Costa Mesa Municipal Code Section 13-29(2) in that the use is not compatible with developments in the same general area. Granting the minor conditional will be detrimental to the health, safety, and general welfare of persons residing or working within the immediate vicinity of the project and to property and improvements within the neighborhood. Granting the minor conditional use permit will allow a use, density or intensity, which is not in accordance with the general plan designation for the property.
- B. The Costa Mesa Planning Commission has denied Zoning Application ZA-08-23. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a) CEQA does not apply to this project because it has been rejected and will not be carried out.
- C. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.



City of Costa Mesa

ATTACHMENT 2

☐ Appeal of Planning Commission Decision
☒ Appeal of Zoning Administrator/Staff Decision

APPLICATION FOR APPEAL, REHEARING, OR REVIEW

Applicant Name* Katherine Young
Address 1829 Glenwood Lane Newport Beach, CA
Phone 949-5488277 Representing SELF as Property owner 92660
REQUEST FOR: ☐ REHEARING ☒ APPEAL ☐ REVIEW**

Decision of which appeal, rehearing, or review is requested: (give application number, if applicable, and the date of the decision, if known.)

Zoning Application for Minor Conditional
Use Permit: (ZA-08-23)

Decision by: Zoning Administrator, Kimberly Brandt
Reasons for requesting appeal, rehearing, or review:

I request this appeal for all the reasons set forth in my written objections to the subject application, which were submitted to the Planning Division on 7/24/08. (A copy of my objections are attached.)

Specifically, allowing this permit will be detrimental to the public's welfare and to other properties due to the existing parking shortages. Current available parking is already overburdened by existing property usages.

Allowing this permit will only increase the parking problem - making traffic and pedestrian safety a greater concern, and
- making the feasibility of patronizing existing businesses a greater concern and undermining the long-term productivity and viability of all nearby commercial properties.

Date: 7/31/08

Signature: Katherine Young

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

**Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only - do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF: 8/25/08

If appeal, rehearing, or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal, rehearing, or review:

**Katherine Young
1829 Glenwood Lane
Newport Beach, CA 92660**

**TO: PLANNING DIVISION / ZONING ADMINISTRATOR
FROM: Katherine Young, Property owner of 1773 Newport
Blvd., Costa Mesa
DATE: 7/24/08
RE: OBJECTIONS to ZONING APPLICATION ZA-08-23**

As a commercial property owner along the 1700 block of Newport Boulevard, I object to the City's approval of the subject application's request for a minor conditional use permit to:

- (1) deviate from shared parking requirements to legalize the expansion of the indoor area to exceed 300 sq. ft.; and**
- (2) allow outdoor seating – for Swirl Yogurt, provider of frozen yogurt and crepes.**

The REASONS for my objections are as follows:

(A) Swirl Yogurt fails to demonstrate that *less* parking is needed due to its hours of operation. In fact, *more* parking spaces are needed due to the nature of its business. Frozen yogurt is most often consumed around lunchtime, in the late afternoon (as a snack) or after dinner for dessert (6:30 pm to 8:30 pm).

Lunchtime is the time of the day when Swirl Yogurt's neighbors, Side Street Café, Wing Stop, and Golden Truffle, are often very busy. Lunchtime is also the time when a high number of consumers have the time to run errands – the time to go to the nearby Dry Cleaners, Salon or Barber Shop, OR shop at Second Spin, the Sunglass shop, the Camera shop, Newport Kids, Winston's Jewelers, Condom Revolution, Purple Haze or the Wicked Chamber.

On Friday, July 19, 2008, Saturday, July 20, 2008, I observed the parking lots most likely to be used by patrons of Swirl Yogurt. The frontage parking along the Westside of the 1700 block of Newport Blvd., is composed of "two distinct" parking areas because it is separated by a small entry/exit area. For purposes of discussion, "LOT A" will refer to the parking spaces located near the corner of 18th Street to the business, Second Spin. "LOT B" will refer to the public parking spaces located from Second Spin to Aloha Grill (set to open soon.) (SEE DRAWING as EXHIBIT A.)

At Lunchtime (12 noon to 3:00 pm) on July 19th, July 20th and July 21st, LOT A was "always" COMPLETELY FULL. As soon as one car would leave, another car would take its place. At times, cars entered LOT A but were unable to locate an available parking space. (SEE EXHIBIT B for pictures/detailed record of the LOT).

LOT B was almost completely full during around lunchtime on Friday, July 19th. On Saturday, July 20th and Sunday, July 21st, Lot B be was very full with only a few open spaces. (SEE EXHIBIT B for pictures/detailed record of the LOT.)

Further, the public parking lot located "behind" Swirl Yogurt was also COMPLETELY FULL around lunchtime on the aforementioned dates. (See EXHIBIT C for pictures/detailed record of the BACK LOT.) This back lot is often full because its spaces are used by: (1) law enforcement officers and personnel of the Westside Police Station; (2) employees of the numerous businesses along the 1700 block of Newport Blvd.; and (3) residents who live in apartments above Swirl Yogurt.

During the evening hours both LOTS A and B were COMPLETELY FULL from 5:45 pm to 10:45 pm. Business from the other merchants during the evening occupies all of the existing public parking spaces. The restaurants, Roman Cucina, Golden Truffle and Wing Stop are open in the evening. The shops – Second Spin, Condom Revolution, Purple Haze and Wicked Chamber are also open in the evening.

Swirl Yogurt being open in the evening at the same time as existing businesses in no way demonstrates that its hours of operation should reduce its parking requirements.

- (1) Further, Aloha Grill was recently approved to open along the 1700 block of Newport Boulevard with a seating capacity of 112 people. Although the City initially required Aloha Grill to obtain valet parking to mitigate the increase demands on parking, Traffic said that valet parking along the subject thorough fare would be too dangerous. Aloha Grill is permitted to open all day from lunch through 2 am. As a result, the subject parking area will be SEVERLY impacted for most business hours.**

(B) The applicant fails to establish that its users have any unusual features that would make parking less necessary. During the daytime, most people work and/or care for their family (children / elders). This requires using a car during the day. Thus, if someone wants frozen yogurt during the day, that person will use his/her CAR to obtain the yogurt. Residents who live nearby, are not likely to walk to get yogurt in the day because they are not at home – they are working/and or running errands associated with caring for themselves and their family.

If Swirl Yogurt were located next to UCI, daytime patrons may well include those who walk/bike to the business rather than drive. However, this is not the case here.

At night, nearby residents are unlikely to walk or ride their bikes to get yogurt because the area is not that safe and there is a lot of traffic in the area along Newport Boulevard and 18th Street.

The applicant may argue that it will obtain a material amount of patrons from nearby businesses. This alone does not justify the deviation from parking requirements and an expansion of the

public area. 300 sq. ft. is a sufficient amount of space for a frozen yogurt establishment to do business.

(C) Granting the requested minor conditional use permit would be inconsistent with the purpose of the Zoning Code. Zoning Code purpose includes: (1) promoting the public health, safety, and general welfare; and (2) maintaining a balance of land uses which can be supported by the infrastructure.

(1) The subject parking areas are already over burdened by land uses of existing parcels. Allowing a deviation would only encourage more cars into the area and create greater parking and traffic congestion.

(a) The increase in cars to the area will be bad for traffic especially because cars are only allowed to ENTER into the subject center off of 18th Street. If a car was going northbound in the parking lot, and it did not find an open parking space, it would need to U-turn rather than EXIT onto 18th Street. An increase in cars wanting to enter the subject center would mean an increase in cars trying to turn left into the center from 18th Street even though a double yellow line is present. The above examples of traffic issues will create health and safety concerns.

(2) Clearly, the limited parking surrounding this strip mall is not supported by the current infrastructure. Approval of the subject application will allow a land use that only more severely overburdens the inadequate infrastructure.

(D) Approval of this application would undermine the long-term productivity and viability of commercial properties – something the Zoning Code strives to maintain.

(1) In fact, if Swirl Yogurt were to become a Yogurtland, it could cause even greater parking and zoning problems. I have seen

over 25 people outside a Yogurtland in Irvine, waiting for yogurt.

(E) Currently, there is not enough parking for the existing land uses. If a study were done to determine how many spaces were necessary for all of the businesses in the subject strip mall, the study would show a great deficit in parking spaces – especially in light of the recent approval of Aloha Grill.

(F) After considering the above, I request that the Zoning Administrator do one of the following: (1) deny the application; (2) continue the decision until a thorough study is done; or (3) defer the matter to the Planning Commission.

Exhibit A

Street

M - 10 - 10am - 10pm
 R.S. 10am - 11pm
 Sunday 11am - 7pm
 Chamber
 Richard
 Upstairs

1777 B

Golden Rush
 Talon
 10pm
 10pm

Handicaps

Second Spin
 10am - 10pm

Handicap 2

Fri - 10am - 11pm
 Sun 11am - 9pm

1781 A

11am - 11pm

1781 B

Wing Stop

11AM - 11PM

14 spaces

1785

Bicycle shop

645
 8691

Fri 11:00 - 11:30
 Sunday - 11:00
 11:00AM - 11:00 PM

6 Spots
 Outside

105A

40 seats inside

Sunglasses

Side Street Cafe

12 Inside
 Outside
 seats

106

Body Piercing

Cleaners

11 spaces

107

LOT A

LOT B

Aloha Grill

BK Flys

Vacant

Golden
Truffle

Roman
Cocina

Winstan Jewels

Baby clothing

Car Ray

July 18 2008

Friday

Back Parking is full at noon

12: PM - NOON

LOT A 0 Full

LOT B 0 Full

1:00 PM

LOT A 0 Full

LOT B 0 Full

2:00 PM

LOT A 0

LOT B 0

Back parking is full at 5:40

5:40 PM

LOT A 7

LOT B 0

6:10

LOT A 6

LOT B 0

6:30

LOT A 3

LOT B 0

July

12:00

Area 12:10

Lot A (4) spaces

12:10 PM

Lot A (2) spaces

12:30

Lot A (1) space

Lot B (7) spaces

Back lot is full 0 spaces

1:00 PM

Lot A (0)

Lot B (5)

2:00 PM

Lot A (1)

Lot B (4)

3:00 PM

Lot A 0

Lot B 12

Saturday nite 7/19

5:20 Lot A 3

Lot B 7

(4) Spaces in Back lot

6:00 Lot A 1

Lot B Full

7:20

Lot A 0

Lot B 0

8:20

Lot A 1

Lot B 1

9:30

Lot A 1

Lot B (1)

Sunday July 20

LOT A 11:15 A.M. 2

11:30 A.M. 0

20 people waiting
or eating outside
Side Street

LOT B 11:15 A.M. 12

12:20

LOT A ①

LOT B 10

1:20

LOT A 0

LOT B 12

Back lot 8
other side 3

2:30

LOT A 0

LOT B 9

3:20

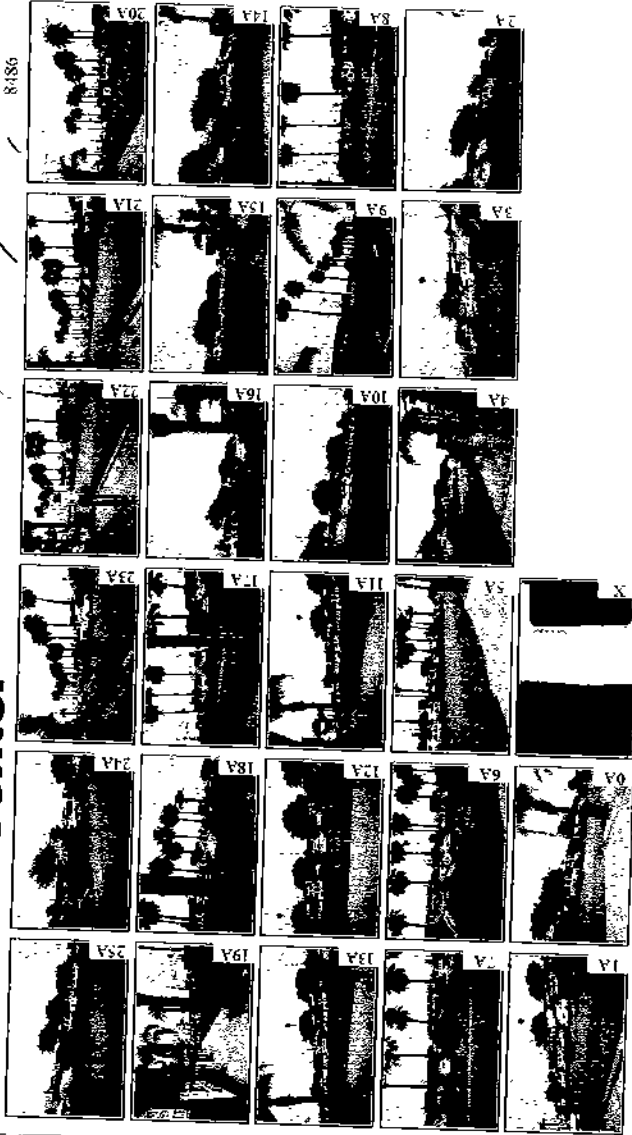
Lot A 0

Lot B 11

Friday 12 to 2 pm
7/8/08

cvS Photo Center

18-Jul-08



cvS Photo Center

18-Jul-08

Friday
7/18/08
12-2pm



7/18/08
Friday
12-2 PM



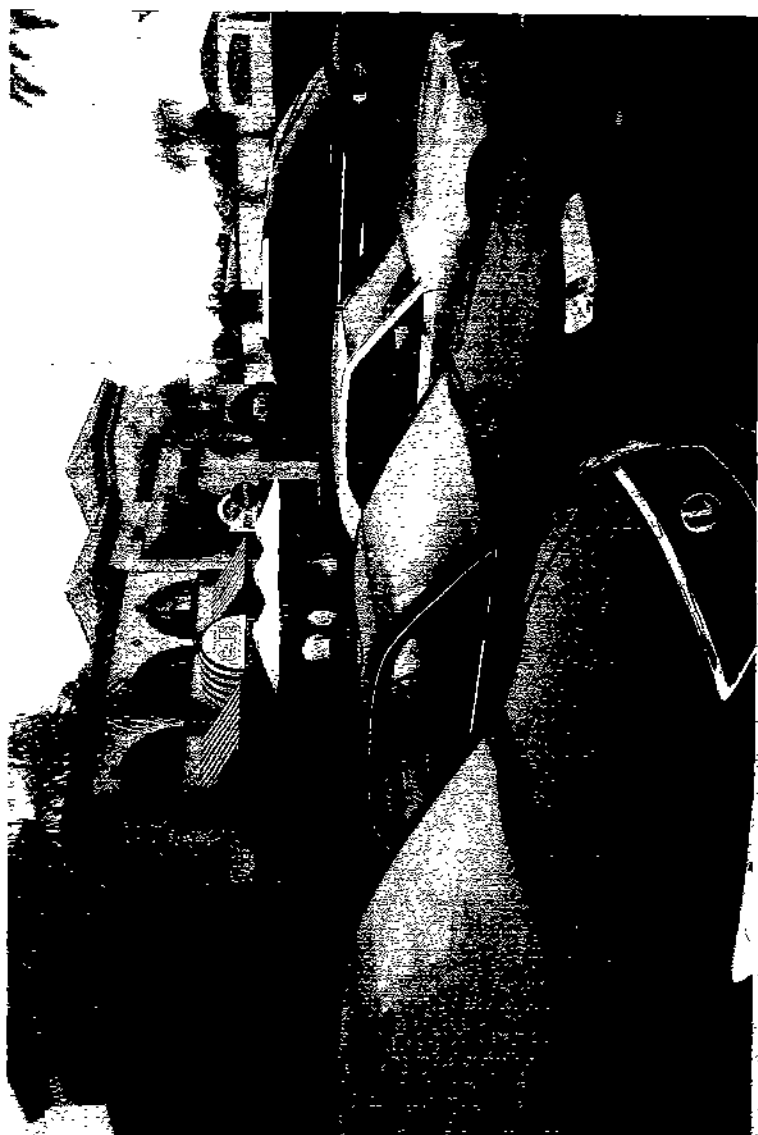
July 19
12 SAT
SAT 2 PM





SUNDAY
7/20

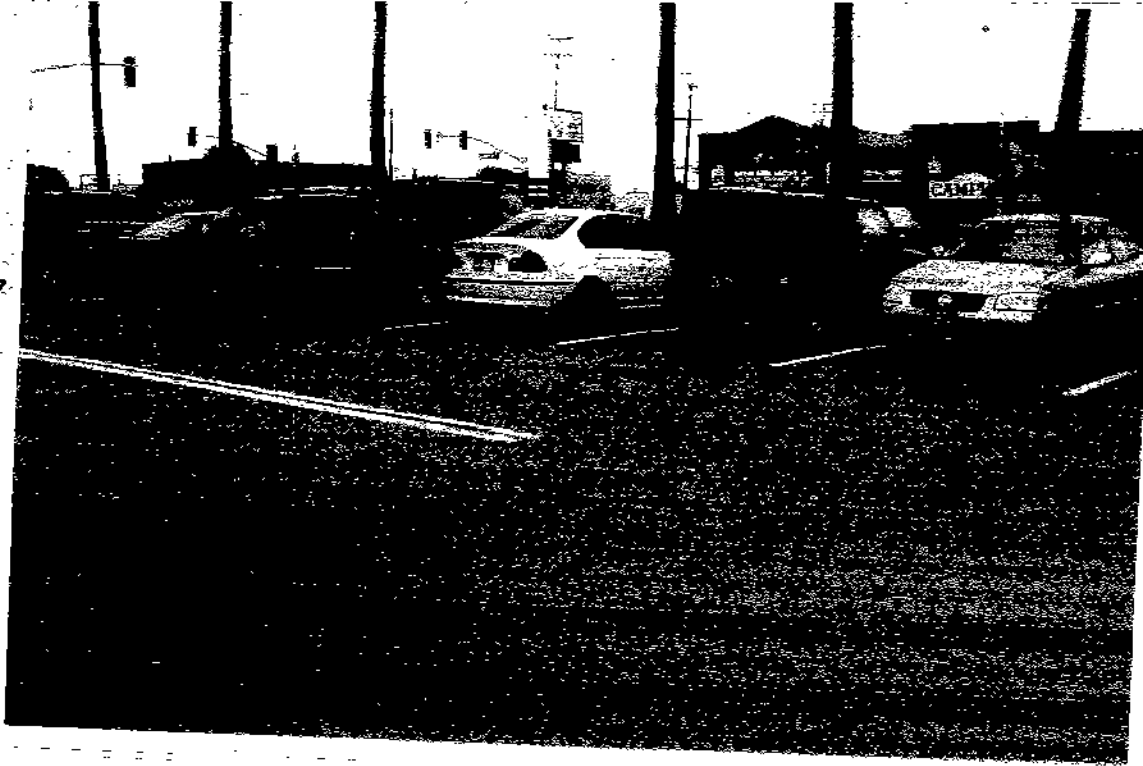
12:30



27



Motorcycle
Sunday
12:30



SAT
7/19/08
Back lot
Lot A
3 PM



✓ Exhibit C ✓



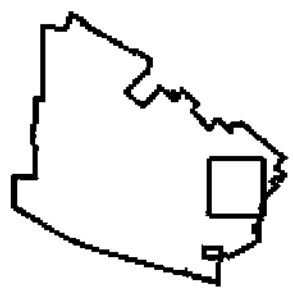
ATTACHMENT 3

City of Costa Mesa

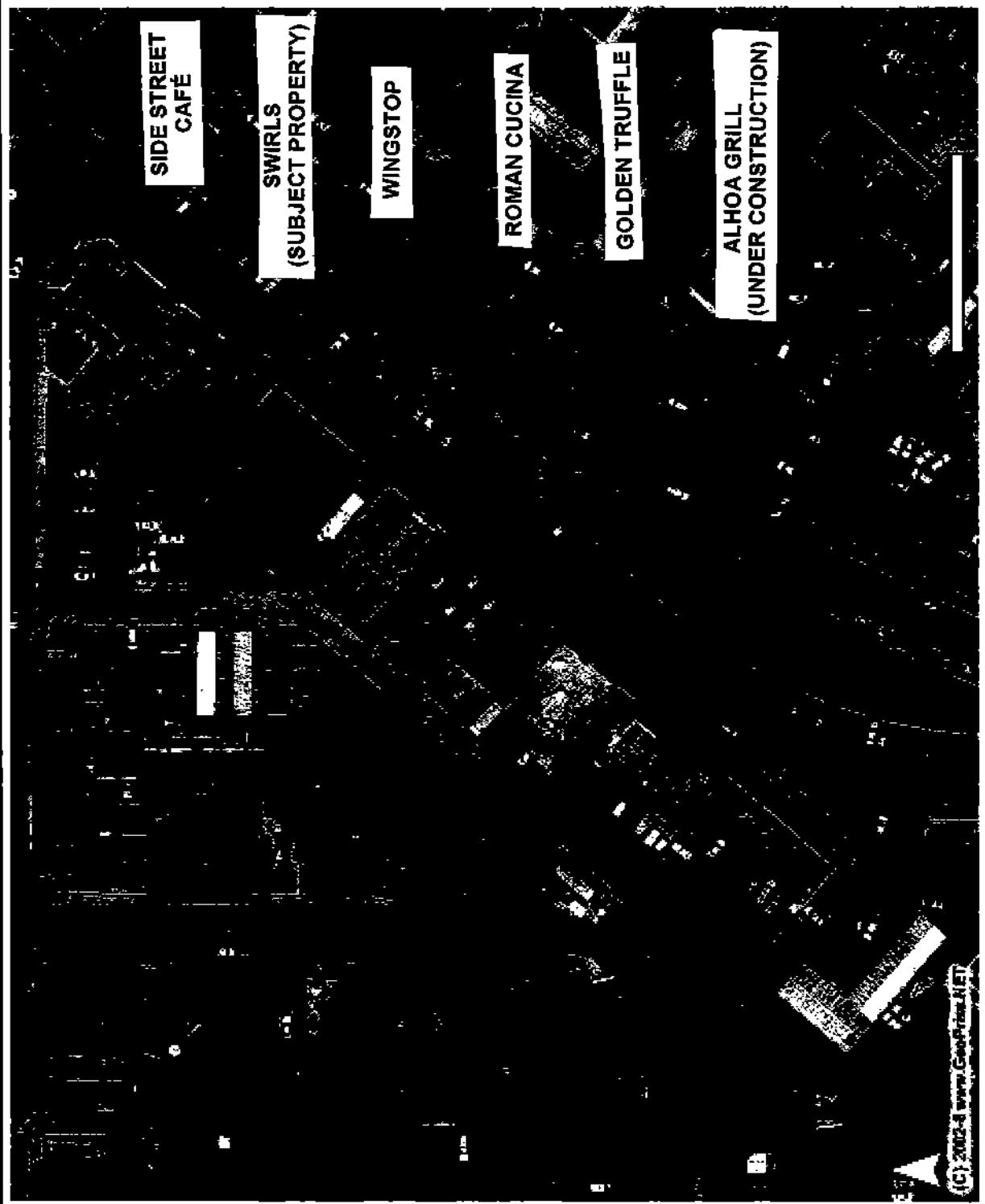
CITY OF COSTA MESA - [Created: 8/6/2008 8:10:07 AM] [Scale: 137.42] [Page: 8.5 x 11 / Landscape]

EATING ESTABLISHMENTS
1700 BLOCK NEWPORT BLVD.

Overview Map



Map Display



Legend

- Street Names
- Street Centerlines
- Parcel Lines
- Level 1 Ortho Photo
- Parcels
- ROW
- Polygons

ATTACHMENT 5



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

July 24, 2008

Cindy Ton
6241 E Fox Glen Drive
Anaheim Hills, CA 92807

**RE: MINOR CONDITIONAL USE PERMIT ZA-08-23
PARKING REDUCTION AND EXTENDED HOURS OF OPERATION FOR
SWIRLS YOGURT SHOP
1799 NEWPORT BLVD, SUITE A101, COSTA MESA**

Dear Ms. Ton:

Review of the minor conditional use permit for the above-referenced project has been completed. The application, as described in the attached project description, has been approved, based on the findings and subject to the conditions of approval (attached). The decision will become final at 5 p.m. on July 31, 2008, unless appealed by an affected party (including filing of the necessary application and payment of the appropriate fee) or by a member of the Planning Commission or City Council.

If you have any questions regarding this letter, please feel free to contact the project planner, Rebecca Robbins, at 714-754-5609.

Sincerely,

KIMBERLY BRANDT, AICP
Zoning Administrator

Attachments: Project description
 Findings
 Conditions of approval
 Approved conceptual plans

cc: Engineering
 Fire Protection Analyst
 Building Division

PROJECT DESCRIPTION

- Swirls yogurt shop was originally approved with 300 square feet or less of public area in a 1,134 square-foot suite. Subsequently, the applicant expanded the public area and added outdoor seating without zoning approval. The applicant is now requesting a minor conditional use permit to legalize the expansion of the public area and outdoor seating, and to close at 11:30 p.m. on Fridays and Saturdays.
- With the proposed expansion and outdoor seating, the yogurt shop requires 15 parking spaces; compared to 5 spaces based on retail parking ratios.
- The yogurt shop is located in the City's downtown area that has historically been deficient in parking. Off-site parking spaces for the property, as well as the other businesses on the 1700 block of Newport Boulevard, are provided in the parking area at the front of the buildings (adjacent to Newport Boulevard) which contains 67 parking spaces. A public parking lot adjacent to the alley at the rear of the site, off West 18th Street, contains 55 parking spaces.
- Several restaurants occupy buildings along the downtown area of Newport Boulevard. The yogurt shop, as more of a snack or dessert food, would be a complementary use to the existing full service restaurants in the vicinity. In addition, the public parking lot located in proximity to the yogurt shop is open during the shop's proposed hours and easily accessible for customers via an existing rear entrance. Therefore, as conditioned, staff does not anticipate any impacts on the surrounding businesses.
- Hours of operation are 11:00 a.m. to 11:00 p.m., Sunday through Thursday, and 11:00 a.m. to 11:30 p.m. on Friday and Saturday. Although the business is within 200 feet of a residentially zoned property, only an additional half hour past 11:00 p.m. is proposed, two days a week. Since alcoholic beverages will not be served and live entertainment is not permitted, residents should not be impacted.
- Conditions have been included restricting the patio seating to a maximum of three tables (12 seats) and that signs be posted in the shop stating there is parking available in the public parking lot on West 18th Street.
- The use is consistent with the Zoning Code and the City's General Plan because, with the proposed operational characteristics, it should not adversely impact surrounding uses.

FINDINGS

- A. The minor conditional use permit to allow a reduction in parking requirements and extend the hours of operation on Friday and Saturday nights substantially comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the minor conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the use has been limited through conditions to minimize impacts to the surrounding businesses. Granting the minor conditional use permit will not allow a use, density or intensity, which is not in accordance with the general plan designation for the property.
- B. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.
- C. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

CONDITIONS OF APPROVAL

- Plng. 1. Hours of operation shall be from 11:00 a.m. to 11:00 p.m., Sunday through Thursday, and 11:00 a.m. to 11:30 p.m. on Friday and Saturday.
- 2. Outdoor patio seating shall not exceed three tables and 12 seats.
 - 3. Within 30 days of approval of this application, sign(s) shall be posted in the customer service area stating there is parking available in the public parking lot on West 18th Street. The Planning Division shall review and approve the sign locations.
 - 4. If parking shortages or other parking-related problems arise, the applicant shall institute whatever operational measures are necessary to minimize or eliminate the problem, including, but not limited to, reduction of tables/seats or modification to hours of operation.
 - 5. Any change in the operational characteristics shall require prior approval by the Planning Division and may require processing of an amendment to the minor conditional use permit.
 - 6. The yogurt shop shall be limited to the type of operation described in this staff report, i.e., limited menu items, restricted outdoor seating area that does not extend beyond the boundary of the tenant space. The Planning Division shall review any change in operational characteristics of the business or change to another business where food or beverages are served to ensure the business has similar operational characteristics.
 - 7. The rear door shall remain closed at all times during business hours except for entry and exit only.

8. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
9. Within 30 days of approval, a sign shall be posted at the rear entrance directing customers and employees to use consideration when entering their cars and leaving the parking lot.
10. The minor conditional use permit herein approved shall be valid until revoked. However, the minor conditional use permit shall expire at the end of one (1) year unless a business license is obtained and/or the business legally commences or the applicant applies for and is granted an extension of time. The minor conditional use permit may be referred to the Zoning Administrator for modification or revocation at any time if the conditions of approval have not been complied with, if the use is operated in violation of applicable laws or ordinances or, if in the opinion of the Development Services Director or his designee, any of the findings upon which the approval was based are no longer applicable.
11. A copy of the conditions of approval for the conditional use permits must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- | | | |
|-------|----|---|
| PIng. | 1. | Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance. |
| Bldg. | 2. | Construction shall comply with the requirements of the 2007 California Building Code. |

VI. 2
ZA-08-23

August 11, 2008

Planning Commission
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628-1200

RECEIVED
CITY OF COSTA MESA
DEVELOPMENT SERVICES

AUG 12 2008

RE: Zoning Application ZA-08-23 (Appeal)

Dear Planning Commissioners:

My family has owned the property at 1799 Newport Boulevard since the 1950's. Swirls is a new business at this property, which includes a mix of retail and residential. I was recently provided with a copy of an appeal of the above referenced zoning action submitted by Katherine Young. I was surprised that Ms. Young would have the nerve to appeal this action considering her former business, The Bamboo Terrace, and her current tenant, Roman Cucina, have created more of a parking problem then Swirls could ever hope to create. I agree with Ms. Young that the Aloha Grill could further exacerbate the existing parking situation. The real parking problems have been created at night by the restaurants in the area. The Golden Truffle has always kept a low profile, but nevertheless does a good business. When Rocking Java was truly "rocking" parking could get very tight. But the absolute worst parking problems were when Bamboo Terrace (which I believe was run by Katherine Young and her sibling(s)) had live entertainment. On these nights, not only was there no parking to be had, but we had cars vandalized, fights and just plain drunken behavior as a result of their clientele.

Most of the other businesses were legal non-conforming uses when the Bamboo Terrace was built. The only reason that Bamboo Terrace (and now Roman Cucina) could operate where they are now is because when the City of Costa Mesa re-aligned 17th Street the original Bamboo Terrace was taken by eminent domain. The compromise was to allow Bamboo Terrace to build their new building without the necessary parking. This situation has always been a potential (and sometimes real) problem. This is why I am so surprised that Ms. Young feels justified in appealing the granting of this zoning application.

At the time that the Bamboo Terrace opened, the existing business in only part of the Swirls location generated substantially more demand for parking in the area as well as problems for the residents in the area. Vikki's Bar occupied only 900 square feet of the Swirls location yet on average used 10-20 parking spaces. And the peak demand was in the evening. In a third more space, Swirls at most generates half this demand at times that dovetail nicely with the retail uses and the restaurants.

As a landlord, I consider Swirls to be a good neighbor to the existing mix of residential, retail and other businesses. There is a very real concern by the residents in the area with uses that might adversely affect their quiet enjoyment. I'm sure the residents in the area would readily provide evidence of the problems created when the nightclub operated in

the location now occupied by Trader Joes. I am also sure that the residents would be happy to share their concerns when a Martini Bar was proposed in our block.

I have always tried to be aware of the fine line between what fits with the residential and existing retail uses. I believe that Swirls fits nicely with the existing mix and does not impose, specifically with regards to parking. For these reasons, I would respectfully request that the Planning Commission would deny this appeal and uphold the granting of this minor Zoning Application.

Sincerely,

Sid Crossley
120 Via Koron
Newport Beach, CA 92663